

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
Tuesday, August 27, 2002 – 9:00 a.m. – Room 414/416 State Capitol

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. David Ure, House Chair
Sen. Mike Dmitrich
Sen. Ed Mayne
Sen. Michael G. Waddoups
Rep. Judy A. Buffmire
Rep. James R. Gowans
Rep. Merlynn T. Newbold
Speaker Martin R. Stephens

Members Absent:

President Al Mansell

Staff Present:

Mr. Arthur L. Hunsaker, Research Analyst
Ms. Susan Creager Allred, Associate General Counsel
Ms. Cassandra N. Bauman, Legislative Secretary

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the committee secretary at 538-1032.

1. Committee Business

Chair Stephenson called the meeting to order at 9:07 a.m. Ms. M. Gay Taylor, General Counsel, Legislative Research and General Counsel, per committee request, briefly discussed the Utah Supreme Court's decision on a lawsuit challenging the state's initiative law.

MOTION: Sen. Waddoups moved to approve the minutes of the July 31, 2002 meeting. The motion passed unanimously.

2. R850-100 Trust Lands Management Planning

Mr. Hunsaker introduced the issue. He indicated that the rule, as published in the June 15, 2002 Utah State Bulletin, eliminated language which included a more detailed notification and comment option.

Mr. Kevin Carter, School and Institutional Trust Lands Administration, distributed information regarding R850-100. He explained the information to the Committee, indicating that the language regarding the method of receiving public input was obsolete and that the intent was not to eliminate public comment. He explained that rules governing each category of activity specify separate planning processes and that they each include their own method of public comment. He indicated that the rule is in compliance with the statute.

3. R982-301 Councils (Regional Workforce Services Councils)

Chair Stephenson introduced the issue. He indicated that the Department of Workforce Services established a procedure in rule for removal of a member of a regional workforce services council. He explained that statute only allows for removal of a member after that member has missed three unexcused meetings.

Ms. Tani Downing, Legal Counsel, Department of Workforce Services, indicated that the department concurs with the Committee's conclusion that the rule exceeds the department's statutory authority. She

explained how the rule came into place and indicated the need to have standard provisions for removal of members on the council. She requested that the Legislature assist the department in drafting legislation to allow removal of members under certain circumstances.

MOTION: Rep. Ure moved that the Committee draft a letter to the Government Operations Interim Committee requesting a review of this issue and that the rule be placed on the sunset list. The motion passed unanimously.

4. Statutory References to "Policies" That Meet the Definition of Rules

Rep. Ure indicated that the Committee has previously discussed concerns with statutes that require departments to draft policies which meet the requirements for rulemaking.

Mr. Hunsaker recited some of the Committee's past experiences in addressing statutory directives to write policies that should have been prepared as rules.

Committee discussion followed.

MOTION: Speaker Stephens moved that staff review the Utah Code and prepare legislation to change, where appropriate, the word "policies" to "rules."

Mr. Ken Hansen, Director, Division of Administrative Rules, indicated that there is a committee which will be meeting next month to discuss agency guidance documents in response to concerns expressed by the Committee during the 2001 Interim.

Mr. Kent Bishop, Governor's Office of Planning and Budget, indicated that the executive branch has had problems with the language in statute and has difficulty determining the legislative intent in some instances. He stated his support for the motion.

SUBSTITUTE MOTION: Rep. Buffmire moved Speaker Stephens' motion and further moved that staff research the definitions of "policy" and "rule."

Rep. Ure encouraged staff to review definitions which are used by other states.

Mr. Gary Doxey, Legal Counsel, Office of the Governor, indicated that the executive branch has felt comfortable with the definitions as they currently exist in statute and that many of the problems have been in particular circumstances and that each case will have to be reviewed individually. He stated that he does not see a great need to change statute at this point.

The substitute motion passed unanimously.

MOTION: Sen. Dmitrich moved that the Committee draft a letter to Ms. Taylor, General Counsel, Legislative Research and General Counsel, to encourage legislative staff to consider the appropriate use of the words "policy" or "policies" in drafting future legislation. The motion passed unanimously.

5. Other Items / Adjourn

Future meetings are scheduled for Monday, September 9 and Monday, September 23, 2002 at 9:00 a.m.

Sen. Mayne indicated that Rep. Buffmire and himself met with constituents and with the Division of Services for People with Disabilities and found that there are some inconsistencies in the division's rules. He stated that the issue should be brought to the committee and would like to see it on the agenda for the next meeting.

Sen. Waddoups indicated that he has an issue which he would like to see come to the Committee and that he is working with staff on the issue.

MOTION: Sen. Waddoups moved to adjourn the meeting. The motion passed unanimously. Chair Stephenson adjourned the meeting at 10:26 a.m.